

Message Text

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17

ACTION TRSE-00

INFO OCT-01 EUR-25 EA-11 ISO-00 AID-20 CIAE-00 COME-00

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FM AMEMBASSY TOKYO

TO SECSTATE WASHDC 4515

INFO AMEMBASSY BERN

AMEMBASSY BONN

AMEMBASSY BRUSSELS

AMEMBASSY THE HAGUE

AMEMBASSY LONDON

AMEMBASSY OTTAWA

AMEMBASSY PARIS

AMEMBASSY ROME

AMEMBASSY STOCKHOLM

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EO 11652: NA

TAGS: EFIN JA

SUBJ: U.S. GOLD CLAUSE JOINT RESOLUTION

REF: STATE 188463

SUMMARY: JAPAN DOES NOT HAVE LAWS OR REGULATIONS SIMILAR TO U.S. GOLD CLAUSE JOINT RESOLUTION. EXTENT TO WHICH LAWS AND REGULATIONS ARE APPLICABLE, HOWEVER, IS DETAILED BELOW. END SUMMARY.

1. DOMESTIC CIVIL LAW: GOLD IS TREATED AS "MONEY" IN ARTICLE 402 OF CIVIL LAW DEALING WITH CONTRACTUAL OBLIGATIONS. BY IMPLICATION, CONTRACT COULD BE EXPRESSED IN LIMITED OFFICIAL USE

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GOLD, ALTHOUGH THIS IS VIRTUALLY NON-EXISTENT IN CURRENT

JAPANESE BUSINESS PRACTICE, SAID A SENIOR MOF OFFICIAL. ARTICLE 403 OF LAW COVERS CONTRACTUAL OBLIGATIONS IN FOREIGN CURRENCY UNDER WHICH DEBTOR SHALL PAY AMOUNT IN YEN EQUIVALENT AT GOING EXCHANGE RATE AT PLACE OF PAYMENT. UNDER THIS ARTICLE, OBLIGATIONS, DOMESTIC OR INTERNATIONAL, CONTAINING MULTIPLE CURRENCY CLAUSE OR ARTIFICIAL UNIT CLAUSE ARE NOT REPEAT NOT ILLEGAL.

2. FOREIGN EXCHANGE LAW AND REGULATIONS.

(A) APPLICABLE TO TRADE AND INVISIBLES: TRANSACTIONS MUST CONFORM TO REGULATIONS GOVERNING THE "STANDARD METHOD OF SETTLEMENT." PAYMENT IN GOLD IS NOT CONSIDERED A STANDARD METHOD OF SETTLEMENT SO THAT SPECIAL MOF APPROVAL WOULD BE REQUIRED. IN PAST, NO SUCH APPROVAL WAS GIVEN BUT UNDER PRESENT FLOATING EXCHANGE RATE SITUATION AND DESIRE TO REDUCE ROLE OF GOLD AS INTERNATIONAL RESERVE ASSET MOF MIGHT BE PREPARED TO RECONSIDER PROHIBITION AGAINST GOLD CLAUSE IN SETTLEMENT OF TRADE AND INVISIBLES TRANSACTIONS. MULTIPLE CURRENCY CLAUSE IS CONSIDERED ACCEPTABLE IN THE STANDARD METHOD SETTLEMENT, WHEREAS ARTIFICIAL UNIT CLAUSE IS NOT. FOR LATTER, MOF APPROVAL WOULD BE REQUIRED BUT MOF OFFICIAL SAID HE PERSONALLY SAW NO SERIOUS PROBLEMS IN APPROVING SUCH REQUESTS.

(B) APPLICABLE TO CAPITAL TRANSACTIONS: ALL TRANSACTIONS MUST BE AUTHORIZED BY MOF. THERE IS NO PAST EXPERIENCE WITH GOLD CLAUSE BUT OFFICIAL SAID HE THOUGHT IT UNLIKELY THAT MOF WOULD GIVE AUTHORIZATION. SEVERAL TIMES IN PAST APPROVAL WAS GIVEN FOR IMPACT LOANS WITH CURRENCY OPTION SO THAT MULTIPLE CURRENCY CLAUSE HAS BEEN USED, ALTHOUGH RARELY. ARTIFICIAL UNIT CLAUSE HAS NOT BEEN USED BUT OFFICIAL HAD NO STRONG OBJECTIONS TO IT. OFFICIAL COMMENTED THAT MOF WOULD NOT NECESSARILY GIVE AUTHORIZATION FOR BORROWING IN EACH AND EVERY CURRENCY. HE ADDED THAT, FOR EXAMPLE, CURRENCY OF OIL-PRODUCING SHEIKDOM MIGHT ENTAIL FOREIGN EXCHANGE RISKS WHICH MOF MIGHT FIND UNACCEPTABLE IN CONTRACT OF JAPANESE BORROWER. HODGSON

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